IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1)	S.B. Civil	Sales Tax Revision Petition	No.202/2002
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(2)	S.B. Civil	Sales Tax Revision Petition	No.18/2003
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(3)	S.B. Civil	Sales Tax Revision Petition	No.27/2003
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(4)	S.B. Civil	Sales Tax Revision Petition	No.28/2003
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(5)	S.B. Civil	Sales Tax Revision Petition	No.424/2004
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(6)	S.B. Civil	Sales Tax Revision Petition	No.329/2005
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur
(7)	S.B. Civil	Sales Tax Revision Petition	No.325/2006
	A.C.T.O., Jodhpur	vs.	M/s Mehta Opticians Jodhpur

Date of Judgment: February 26,2007.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.
Mr. S.P. Vyas for the non-petitioner.

BY THE COURT:

In all these revision petitions, only question involved is that whether the Assessing Authority is required to re-examine the matter in the light of decision given by this Court in S.B.Civil Sales Tax Revision No.447/93-M/s Mehta Opticians vs. Assistant Commercial Taxes Officer, Ward II A-Circle, Jodhpur dated 16.5.1994 and in view of the subsequent order passed by this Court in Review Petition No.184/95 (defect case) dated 21.4.1999 which was passed by this Court after dismissal of Civil Appeal No.773/1995 by the Hon'ble Apex Court by which the revenue challenged the judgment of this Court dated 16.5.1994 delivered in the case of S.B.Civil Sales Tax Revision No.447/93.

Brief facts of the case are that the assessee is a dealer of spacts, glasses and frames. A question arose before this Court in assessee's Sales Tax Revision No.447/93 whether by preparing spects from the glasses and frames, any different commodity comes in existence and that new product, is liable to be taxed under the Rajasthan Sales Tax Act. This Court held that by fixing the glasses in the frames, may it be of numbers as given by the eye-specialist, the spects having frame and fixed glasses therein are not new commodity and as such the spects themselves are not taxable as new commodity. While deciding the S.B.Civil Sales Tax Petition No.447/93, this Court in para no.5 also held as under:-

> "5. It is not in dispute that frames and glasses are exempted from payment of tax. The spectacles being not a different commodity would not attract tax on their sale."

The revenue preferred Special Leave Petition before the Hon'ble Apex Court and it appears that the leave was granted, therefore, Civil Appeal No.773/93 was registered in the Supreme Court. Before the Hon'ble Supreme Court it was contended on behalf of the revenue that frames and glasses were not exempted from payment of tax. Hon'ble the Apex Court dismissed the said Civil Appeal NO.773/93 by order dated 26.8.1998. While dismissing the appeal, the Apex Court took note of the facts mentioned in para no.5 of the judgment of this Court dated 16.5.1994 quoted above and highlighted which was impugned before the Hon'ble Apex Court and the Hon'ble Apex Court observed that in the High Court's judgment dated 16.5.1994, there are specific words used are that “it is not in dispute”, before recording the fact that frames and glasses were exempted from payment of tax. The Hon'ble Apex Court in its order dated 26.8.1998 passed in Civil Appeal No.773/995 recorded this fact also that at that time, the learned counsel for the revenue stated that he will not urge his contention, obviously before the Supreme Court, which goes contrary to the fact recorded in the judgment of the High Court dated 16.5.1994 as it could not have been raised in appeal without submitting review petition before the same court. It appears that a review petition was also submitted before this Court which was registered as S.B.Civil Review Petition No.184/95(Def.). In the review, it was submitted that it was never admitted by the

revenue that the sale of glasses and the frames are exempted from tax under the provisions of the Rajasthan Sales Tax Act. Said Review Petition No.184/95(Def.) was disposed of by this Court by order dated 21.4.1999. This Court in its order on review application of the revenue very specifically held that the order of this Court dated 16.5.1994 passed in assessee's Revision Petition No.447/93, so far as it relates to para no.5 of the said judgment is concerned, that is required to be modified and substituted. This Court by order dated 21.4.1999 passed in Review Petition No.184/95 substituted para no.5 of the order of this Court dated 16.5.1994 by undermentioned language:-

> "In the present facts and circumstances of the case it is held that the petitioner (now the opposite party) is not a manufacturer of spectacles simply by assembling of frames and glasses, fitting to individual glasses and after that selling it to the customers. To my mind, assembling parts of the frames does not create something new hence the petitioner (now the opposite party) cannot be termed to be a 'manufacturer' within the meaning of Section 2(k) of the Rajasthan Sales Tax Act, 1954."

In view of the above fact, this Court already deleted the language used in para 5 in the order dated 16.5.1994 recording the admission of the revenue that the frames and glasses are exempted from tax.

The revenue thereafter submitted an application before the Tax Board and prayed that the order was passed by the Tax Board under

impression on the basis of the judgment of this Court dated 16.5.1994 recording revenue's admission about the fact that frames and glasses are exempted from tax, therefore, the matter may be sent back to the Assessing Authority for assessing the tax on the sale of the frames and glasses which were sold after assembly by fixing glasses in the frames as one spect.

The learned counsel for the non-petitioner vehemently submitted that in fact the assessee has already paid the tax on the frames and glasses and, therefore, there is no reason for remanding the matter to the Assessing Authority. It is also pointed out by the learned counsel for the assessee that in the assessment order itself there is mention that all the frames and glasses were sold by the assessee as taxable items and on those items, the assessee has already paid tax. It is also submitted that the issue was before the Assessing Authority about the taxability of the glasses and frames.

I considered the submissions of the learned counsel for both the parties and perused the order dated 16.5.1994 passed by this Court in S.B.Civil Sales Tax Petition No.447/1993, order of the Hon'ble Apex Court dated 26.8.1998 passed in Civil Appeal No.773/95 and the order dated 21.4.1999 passed in S.B.Civil Review Petition No.184/95 by which para no.5 of the original order dated 16.5.1994 was deleted and substituted by another para.

So far as controversy in S.B.Civil Sales Tax Petition No.447/99 is concerned, that was a limited controversy, which is apparent from the facts mentioned above. The Tax Board in its subsequent order dated 24.6.1994 in revenue's Appeals No.81/90 and 53/89 already considered this aspect of the matter and remanded the matter to the Assessing Authority to inquire the factual aspect of the matter whether the assessee paid the tax on sale of glasses and frames or not. The learned counsel for the assessee frankly admitted that after the order of the Tax Board dated 24.6.1994, passed in the matter of the assessee itself, the Assessing Authority held enquiry and decided in favour of the assessee and held that the assessee has already paid the tax on glasses and frames. This is not in dispute that the order dated 24.6.1994 passed by the Tax Board attained the finality. In view of the above, two things are clear that tax is leviable on sale of glasses and frames even if they are sold in the form of spects and second is whether the assessee has paid the tax on such sale is a question of fact and that factual enquiry can be conducted only by the Assessing Authority to find out whether the assessee has paid the tax on glasses and frames which were used in the spects and sold by the assessee.

In view of the above, all the revision petitions are allowed. The impugned orders of the Tax Board are set aside and the matter is remanded to the Assessing Authority who may hold an enquiry about the

tax liability of the petitioner in relation to the commodities sold by the assessee by fixing the glasses in frames and treating the spects themselves as not a new commodity but treating the glasses and frames used in the preparation of the spects as taxable commodity. The parties shall appears before the Assessing Authority on 9.4.2007.

(PRAKASH TATIA),J.

mlt.